

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.5837 OF 2004

(For condonation of delay)

IN

CRIMINAL APPLICATION NO.1349 OF 2005

(For leave to appeal)

The State of Maharashtra

.. Applicant.

v/s.

1. Pramod Hiralal Gupta,
Age about 23 yrs.

2. Manoj Hiralal Gupta,
Age about 25 yrs.

.. Respondents.

Both R/a.Krishna Angan Bldg.,
Room No.307, Near Kashi
Vishwanath Mandir, R.N.P.Park,
Bhayander (E), Dist.Thane.

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Bhayander (E), Dist.Thane.

Smt.V.R.Bhonsale, Additional Public Prosecutor for
the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 4th March, 2005

P.C.

Heard Smt.V.R.Bhonsale, the learned Additional
Public Prosecutor.

2. The present respondents were put up for trial in sessions case No.329 of 2003 for the offences punishable under sections 498-A, 304-B, 306 read with section 34 IPC.

3. As per the prosecution case, Babita (since deceased) was married with the present respondent No.1 (original accused No.1 and hereinafter referred to as A1) on 15.5.2002 in Uttar Pradesh. Gauna ceremony was performed on 9th December, 2002. The present respondent No.2-Manoj (original accused No.2 and hereinafter referred to as A2) is the brother of A1. After Gauna ceremony, Babita came to reside at Bhayander with A1. A2 was also residing in the same house with his wife. It is the prosecution case that A1 and A2 were harassing Babita on account of dowry. On 1.4.2003, A1 informed Babita's father that she had committed suicide by hanging herself. Babita's parents reached the house of A1. The dead body of Babita was sent for the postmortem wherein it was revealed that Babita had committed suicide.

Babita's father Ghanshyam Bhagavatiprasad Gupta lodged the information with Mira Road Police Station that due to illtreatment suffered by Babita at the hands of A1 and A2, she committed suicide and offence under sections 498-A, 306 read with section 34 IPC was registered against A1 and A2. After conclusion of trial, I Ad-hoc Additional Sessions Judge, Thane acquitted the accused persons vide his judgment dated 25.6.2004. Aggrieved by the said judgment of acquittal, the State preferred criminal appeal (now converted in criminal application for leave to appeal on 20th December, 2004). Since this criminal appeal is barred by time vide criminal application No.5837 of 2004, it is prayed that delay

in filing the appeal be condoned.

4. From the facts set out in the application for condonation of delay, it transpires that the application for obtaining certified copy of the judgment dated 25.6.2004 was made on 30.6.2004. The certified copy was ready on 3.7.2004 and delivered on 7.7.2004. The concerned Public Prosecutor, Thane vide his communication dated 28.7.2004 to the Law and Judiciary Department, Mantralaya, Mumbai suggested that appeal be preferred against the judgment of acquittal. The Law and Judiciary Department scrutinised the papers and issued

Government resolution dated 10/11.8.2004 and asked the Public Prosecutor, High Court (A.S.) to file appeal. The Government resolution dated 10/11.8.2004 was received on 13.8.2004. The appeal was filed on 20.12.2004. The explanation put forth is that the concerned Additional Public Prosecutor to whom the matter was assigned was extremely busy in urgent admission matters, final hearing, bail application matters and important correspondence with various departments and he was unable to draft the appeal memo and hence delay. The drafting of criminal appeal against the judgment of acquittal is not a complex affair. Ordinarily, it should not take more than a week for the Additional Public Prosecutor to draft the appeal against the judgment of acquittal from the date the matter is assigned to him. In the circumstances, therefore, it is very difficult to accept the explanation put forth that the concerned Additional Public Prosecutor to whom the matter was assigned was extremely busy. Moreover, during the period from 13.8.2004 when the Government resolution was received by the office of the Public Prosecutor and the date when the appeal was filed, there was vacation of two weeks. Obviously, during this period, the concerned Additional Public Prosecutor could not have been busy in urgent matters as set out in the

application.

5. The application for condonation of delay does not spell out sufficient cause within the meaning of section 5 of the Limitation Act.

6. However, we wanted to satisfy ourselves whether there was any case made out for grant of leave if the delay was condoned.

7. Having considered the matter, we find that the view of the learned trial Judge is the possible view. The evidence of PW1 who is father of deceased Babita is full of material omissions. The said material omissions are considered by the trial court in para 11 of the impugned judgment which reads thus-

"These material omissions which are not mentioned in the complaint Exh.12 are as under:-

That, it is not in his police statement that accused No.2 demanded Rs.60,000/- for dowry prior to marriage. It is not in his complaint that he had given wrist watch, golden chain and ring to accused No.1 in the marriage. It is also not in his police statement that he gave Rs.20,000/- to accused No.2 after the marriage in the month of January, 2003. It is also not in his police statement that accused No.2 is told deceased to bring more money and that his daughter Babita told him on telephone that accused were assaulting her. It is also not in his police statement that his

daughter Babita told him that as she wanted
to live with accused, therefore, she should
not file complaint. It is also not in his
statement that he had gone to fetch his
daughter Babita for Holy and accused
refused to send her. All these material
omissions if taken together, would go to
show that the evidence on the point of
illegal demand for Rs.20,000/- or more or
that accused were assaulting or illtreating
deceased Babita, was after thought or
improvement made in the court. P.W.No.1
was confronted with his complaint Exh.12
but he could not give any reason that why
all these material omissions enumerated
above, do not appear in his complaint
Exh.12."

8. We agree with the view of the learned trial
Judge that the evidence of PW1 is highly
unreliable. The illtreatment and cruelty on
account of illegal demand of money is not
established by the evidence of PW1.

9. Smt.Urmila Gupta (PW3) is the mother of the
deceased. In her deposition as well, the material
omissions were found. The evidence of PW3 is no
better than the evidence of PW1.

10. Shatrughna Gupta and Rajendraprasad Gupta (PW4
and PW5) are other relatives of the deceased.
There are material discrepancies in the evidence of
these two witnesses as well that renders their
evidence unreliable. In the circumstances, the
trial court cannot be said to have erred in

rejecting such unreliable evidence.

11. The rest of the evidence is also not sufficient to prove that the deceased was subjected to cruelty for dowry.

12. All in all, the consideration of the matter by the learned trial Judge does not suffer from any legal infirmity by perversity.

13. Both the applications being criminal application No.5837 of 2004 (for condonation of delay) and criminal application No.1349 of 2005 (for leave to appeal) are, accordingly, rejected.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)